S.B. Civil Revision Petition No.72/04
Pusha Ram @ Laduram Vs. Madan Lal & Ors.

Date of Order : 05/07/2006

Hon'ble Mr. Justice Ajay Rastogi

Mr. Rajeev Surana, for petitioner
Mr. Inderjeet Singh, for respondents

Instant revision petition has been filed by the petitioner-defendant against the order dated 12th March, 2004 [Ann.7] whereby the learned trial Judge granted permission to the plaintiff to withdraw the suit with liberty to file afresh for the same cause of action. The plaintiff-respondent filed suit for ejectment in December, 1987 on various grounds. During pendency, because of some legal impediment with which he came across, after the Rent Control Act, 2001 became effective, an application was filed by the respondent-plaintiff on 20th February, 2004 seeking permission for withdrawal of suit with liberty to file afresh for the same cause of action.

The said application was opposed by the defendants inter alia on the ground that the suit for ejectment is pending for last 17 years and seeking permission for withdrawal of suit at this stage, when they have to lead evidence in support of their case and there is no reasonable justification offered seeking permission for withdrawal of the suit. It was simultaneously prayed that he should be imposed cost if permission for withdrawal of suit for ejectment is granted by the court.

The learned trial Judge after hearing the parties granted permission to the respondent-

plaintiff vide order dated 12th March, 2004 with liberty to file fresh suit on payment of cost of Rs.1,000/-. Hence, this revision petition.

Counsel for petitioner submits that the suit remained pending for 17 years and permission for withdrawal of suit for the same cause of action to be permitted only if there are some formal defects or there was sufficient ground for plaintiff to file fresh suit for the same subject matter available under O.23 R.3 A & B. The learned trial Judge has neither recorded finding with respect to formal defect in the pending suit nor he has referred to the sufficient grounds available for the plaintiff seeking permission for withdrawal of suit. As such very permission granted is beyond the scope of O.23 and such finding recorded, requires interference.

Counsel for respondents submits that the plaintiff was owner of the property rented out to the defendant-petitioner and before the defendant led evidence in the pending suit, certain legal impediment came forward before him in view of the Act of 2001 and that constrained him to seek permission for withdrawal with liberty to file fresh suit and sufficient justification was offered in the application seeking permission filed on 20.02.2004. In such circumstances, no error has been committed by the leaned trial Judge in passing the order impugned dated 12.03.2004 granting permission for withdrawal with liberty to file fresh and it is inconsonance with O.23 R.3 A & B. He further submits that there is no manifest error of jurisdiction or material irregularity has been committed by the learned trial Judge in passing the order impugned.

I have considered the submissions made by the parties and with their assistance examined the material available on record.

The suit was filed by the respondent-plaintiff for ejectment against the defendants from the property and the present defendant is enjoying tenancy despite matter was initiated by the respondent-plaintiff seeking permission for ejectment under the relevant provisions of the statute. The learned trial Judge after taking into consideration the material exercised his discretion in granting permission to the plaintiff for withdrawal of the suit with liberty to file a fresh for the same subject matter, in my opinion, finding recorded is in consonance with O.23 R.3 A & B CPC and I do not find any manifest error of jurisdiction committed by the learned trial Judge in passing the order impugned in the present revision petition.

Counsel for the respondents has further informed this court that fresh suit for ejectment has been instituted by the respondent-plaintiff in which written statement has also been filed by the present defendant-petitioner and the matter is pending for adjudication and apart from it, the cost, as directed by the learned trial Judge, has been deposited. I am not inclined to interfere in the order impugned in the present revision petition.

Consequently, the revision petition fails and is hereby dismissed.

[Ajay Rastogi],J.

FRB